In the High Court of Judicature at Madras

Dated : 22.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.33899 to 33904 of 2017
& WMP.Nos.37600 to 37605 of 2017

Kumar Impex, rep.by its
Proprietor Mukesh Kumar Prohit ...Petitioner in all WPs

Vs

The Commercial Tax Officer,
Sowcarpet Assessment Circle,
Chennai-1. ...Respondent in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records on the file of the respondent in TIN/33060241637/2008-09, TIN/33060241637/ 2009-10, TIN/33060241637/2010-11, TIN/33060241637/2011-12, TIN/ 33060241637/2012-13 and TIN/33060241637/2013-14, quash the notices therein dated 06.11.2017 and direct the respondent to strictly abide by the orders passed by this Court in WP.Nos.20897 to 20902 of 2017 dated 08.8.2017.

For Petitioner in all Wps : Mr.A.P.Srinivas

For Respondent in all Wps : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. These writ petitions could have been avoided if the respondent - Assessing Officer had given his thought process to the directions issued by this Court in the earlier writ petitions in W.P.Nos.20897 to 20902 of 2017 dated 08.8.2017.

3. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed these writ petitions challenging the notices for the relevant years as being arbitrary, unsustainable and against the principles of natural justice.

4. The fulcrum of the argument of the learned counsel for the petitioner is that the revision of assessment was based on the details culled out from the Departmental website and that in spite of the petitioner's request to furnish the details namely mismatch details and check post details, the same were not furnished. Apart from that, the respondent had no independent material except for the information from the Director of Revenue Intelligence, which is indeed a show cause notice, which is yet to be adjudicated.

5. Considering the reasons for reopening, this Court found that the manner, in which, the Assessing Officer proceeded was incorrect and therefore, those writ petitions were partly allowed with certain directions. At this juncture, it would be relevant to refer to the relevant portions of the order dated 08.8.2017, which are as hereunder :

> "10. After hearing the parties elaborately and perusing the materials placed on record including the counter affidavit filed by the respondent and the typed set of papers filed by the respondent, the following conclusion is arrived:
>
> (i) So far as the two grounds on which the assessments have been revised viz., with regard to mismatch of details culled out from the official website and the allegation of sales suppression based on check post entires once again culled out from the Departmental website, it is clear that in spite of the request made by the petitioner to furnish the details, the respondent has not furnished the details. Therefore, the impugned order is liable to be set aside on those grounds as it is in violation of the principles of natural justice.
>
> (ii) The third ground on which the assessments have been revised is on the ground of mis-declaration of value. It is evident that these allegations which have been mentioned in the show cause notice are not based on any independent enquiry conducted by the Commercial Taxes Department, but solely based upon the information received from the DRI. Admittedly, the DRI has issued show cause notice only on 22.06.2016. Thus, the case is yet to be adjudicated and the duty liability is yet to be crystallized, unless and until the duty liability is crystallized, alleged sales suppression

cannot be ascertained. Thus, the basis for fixing the sale value of imported goods is yet to attain a finality. The respondent has referred to certain allegations which were made against the petitioner in the counter affidavit filed by the DRI, while opposing the bail petition filed by the petitioner before the Addl. Chief Metropolitan Magistrate, EO-II, Egmore, Chennai. However, the said Court has not rendered any finding on such allegations and bail has been granted on the ground that the petitioner/accused was arrested and he has been remanded to Judicial custody for 40 days.

11. Therefore, in my considered view, the averments in the counter affidavit filed by the DRI in the bail petition nor the averments which are set out in the show cause notice issued by the DRI dated 22.06.2016, can ipso facto be the basis for demand of sales tax. It is well open to the respondent to rely upon such material based on information received from the DRI. What is required to be done is to conduct independent enquiry for which the petitioner should be given opportunity of personal hearing. This can be done only after the DRI completes the adjudication of the show cause notice dated 22.06.2016, as all documents are in the custody of the DRI. Therefore, the respondent has to necessarily await the adjudication of the case by the DRI or the Customs Officials with regard to the allegation of sales suppression/mis-declaration of value.

12. Thus, for the above all reasons these writ petitions are partly allowed with the following direction :

(i) the respondent is directed to furnish all the details in respect of the allegation of mismatch and allegation of interstate sales suppression culled out from the website and provide all details including invoice numbers, name of the dealer and TIN number etc., and grant 15 days time to the petitioner to file their objections and thereafter, grant an opportunity of personal hearing and re-do the assessment under those two heads.

(ii) so far as the assessment made under the head mis-declaration of value dated 22.06.2016, is concerned subject to the out come of the show cause notice issued by DRI dated 22.06.2016, the respondent is at liberty to initiate proceedings under the TNVAT Act. In such event, the petitioner cannot state that such action is barred by limitation, since the petitioner in this writ petition sought for deferment of the proceedings till adjudication of the show cause notice dated 22.06.2016

With the above reasons and directions, these writ petitions are partly allowed."

6. So far as the directions contained in paragraph 12(ii) of the order dated 08.8.2017 is concerned, the respondent understood the scope of the direction and called for information with regard to the stage of adjudication of the case by the Directorate of Revenue Intelligence. However, with regard to the direction contained in paragraph 12(i) of the order dated 08.8.2017, the respondent totally misunderstood the earlier directions issued in the said writ petitions and stated that the details have already been furnished even in the earlier notices dated 15.9.2014.

7. On a comparison of the notices dated 15.9.2014 with the impugned notices, it is seen that it is a verbatim reproduction of the first notice. This Court did not expect the respondent to proceed in such a manner. When pointed directions were issued by this Court to furnish materials, as the revision of assessment is based on the information culled out from the intranet of the Departmental website, the impugned notices are required to be quashed.

8. Accordingly, the writ petitions are allowed, the impugned notices are set aside and the matters are remitted back to the respondent to scrupulously follow the directions contained in the earlier order dated 08.8.2017. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

RS

To

The Commercial Tax Officer,
Sowcarpet Assessment Circle,
Chennai-1.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.92579

+1cc to the Government Pleader, S.R.No.92616

WP.Nos.33899 to 33904 of 2017&
WMP.Nos.37600 to 37605 of 2017

EV(CO)

RRK(10/01/2018)